

November 2013

# Tax bulletin



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PHILIPPINE TAX FIRM  
OF THE YEAR  
AND  
TRANSACTION TAX TEAM  
OF THE YEAR

# Highlights

## BIR Rulings

- ▶ An electric cooperative that is registered with the National Electrification Administration (NEA) is subject to income tax on its income from electric service operations. It is also subject to all other national government taxes and fees, including VAT, filing, recordation, license or permit fees or taxes when its exemption ended on December 31, 2002, which was the 30<sup>th</sup> full calendar year after the date of its organization, or when it became completely free of indebtedness, whichever came first. **(Page 3)**
- ▶ A non-resident is not deemed to have a permanent establishment (PE) in the Philippines if it delivers goods for sale to a local buyer (through a warehouse) under a Just-in-Time Arrangement. The sale of goods by a non-resident under a Just-in-Time Arrangement is subject to 12% final withholding VAT. **(Page 4)**

## BIR issuances

- ▶ Revenue Regulations (RR) No. 18-2013 amends certain sections of RR No. 12-99 on the due process requirement in the issuance of deficiency tax assessments. **(Page 5)**
- ▶ Revenue Memorandum Circular (RMC) No. 70-2013 clarifies the list of documentary requirements for registration, issuance of TINs, updates and transfers of business registration originally prescribed under "Annex A" of RR No. 7-2012. **(Page 12)**
- ▶ RMC No. 73-2013 amends RMC No. 31-2013 with respect to the appropriate tax treatment of individuals employed by the United Nations (UN) and its Specialized Agencies, and prescribes additional guidelines on the tax filing obligations of the individual taxpayers concerned. **(Page 15)**

## BSP Issuances

- ▶ Circular No. 817 amends Subsections X361.5 and X361.7 of the Manual of Regulations for Banks (MORB) on the Granting of Housing Microfinance and Micro-Agri Loans. **(Page 20)**
- ▶ Circular No. 818 amends the Foreign Exchange Regulations. **(Page 21)**
- ▶ Circular No. 819 amends Circular No. 769 dated 26 September 2012, which prescribes the guidelines on requests for Monetary Board opinion on the monetary and balance of payments implications of proposed domestic borrowings by local government units (LGUs) pursuant to Republic Act (RA) No. 7653. **(Page 22)**

## BOC Issuance

- ▶ Customs Memorandum Order (CMO) No. 8-2013 creates a One-Stop Shop ("OSS") to expedite the processing and release of importations of donated relief goods/articles/ equipment intended for the calamity-declared areas and victims of disasters/calamities. **(Page 22)**

## BOI Issuance

- ▶ BOI Memorandum Order No. 059 publishes the 2013 Investments Priorities Plan (IPP). **(Page 24)**

## SEC Opinions

- ▶ When a corporation sends e-mail notices of meetings to stockholders and board of directors and such mode is provided for by the corporation's charter, resolutions passed by the corporation during said meetings are valid. (Page 29)
- ▶ When the resignation of a hold-over director or trustee causes a vacancy in the board, the vacancy may only be filled by a vote of stockholders or members in a regular or special meeting. For this purpose, a quorum shall consist of stockholders representing a majority of the outstanding capital stock or members entitled to vote. (Page 30)

## BLGF Opinions

- ▶ The community tax shall be paid only in the place where the principal office of a juridical entity is located and is not required to be paid in the LGUs where branch or sales offices are located. (Page 30)
- ▶ The transfer of title to the land and the common areas of a residential condominium project from the developer to the condominium corporation pursuant to the Condominium Act is not a "transfer" but merely a confirmation of ownership over the condominium units previously acquired by the unit buyers. Hence, it is not subject to local transfer tax. (Page 31)

## Court Decision

- ▶ While real property tax attaches to a property, any unpaid realty tax may be directly charged against the taxable person who has actual and beneficial use and possession of the property.

To be exempt from real property tax under Section 234(c) of the Local Government Code (LGC), the machinery and equipment must be actually, directly and exclusively used by the local water district or government-owned-or-controlled corporation engaged in the supply and distribution of water or generation and transmission of electric power. (Page 32)

## BIR Rulings

### BIR Ruling No. 419-2013 dated November 13, 2013

#### *Facts:*

A Co., a local electric cooperative registered with the National Electrification Administration (NEA) requested for a Tax Exempt Certification from the BIR pursuant to RMC No. 72-2003.

#### *Issues:*

1. Is A Co. subject to tax on income from electric service operations?
2. Is A Co. subject to any other taxes?

#### *Ruling:*

1. Yes. A Co.'s income from electric service operations is subject to income tax. This is pursuant to Fiscal Incentives Regulatory Board (FIRB) Resolution No. 24-87 issued on June 14, 1987, which expressly provides that income from

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An electric cooperative that is registered with the NEA is subject to income tax on its income from electric service operations. It is also subject to all other national government taxes and fees, including VAT, filing, recordation, license or permit fees or taxes when its exemption ended on December 31, 2002, which was the 30<sup>th</sup> full calendar year after the date of its organization, or when it became completely free of indebtedness, whichever came first.

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electric service operations and other sources, including interest income from bank deposits and yield or any other similar arrangements, remain taxable.

2. Yes. Beginning January 1, 2003, A Co. is subject to all other national government taxes and fees, including VAT, filing, recordation, license or permit fees or taxes. Its exemption ended on December 31, 2002, which was the 30<sup>th</sup> full calendar year after the date of its organization, or until it became completely free of indebtedness incurred by borrowing, whichever came first, as provided for in Section 39 of Presidential Decree (PD) No. 269.

The BIR also said that all electric cooperatives registered with the NEA are subject to the following taxes:

- ▶ 20% final withholding tax (FWT) on interest income from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties derived from sources within the Philippines;
- ▶ 7.5% FWT on interest income derived from a depository bank under the expanded foreign currency deposit system;
- ▶ Capital gains tax (CGT) on sales or exchanges of real property classified as capital assets or shares of stock;
- ▶ Documentary stamp tax (DST) on transactions of cooperatives dealing with non-members, except transactions with banks and insurance companies, provided that whenever one party to the taxable document enjoys exemption from DST, the other party who is not exempt shall be the one directly liable for the tax;
- ▶ Value-Added Tax (VAT) on purchases of goods and services;
- ▶ VAT on sales relative to the generation and distribution of electricity, provided that sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT;
- ▶ VAT on importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity; and
- ▶ All other taxes for which the electric cooperatives are not otherwise expressly exempted by any law.

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#### **BIR Ruling No. ITAD 310-13 dated November 18, 2013**

##### ***Facts:***

A Co., a non-resident foreign corporation based in China, entered into a Just-In-Time Inventory Agreement with B Co., a domestic corporation. In the Agreement, A Co. agreed to deliver magnetic heads to B Co.'s warehouse, for use by B Co. as raw materials in its production of hard disk drives. However, since the arrangement is "just in time," A Co. will only recognize a sale upon B Co.'s actual withdrawal of the magnetic heads from the warehouse.

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A non-resident is not deemed to have a PE in the Philippines if it delivers goods for sale to a local buyer (through a warehouse) under a Just-in-Time Arrangement. The sale of goods by a non-resident under a Just-in-Time Arrangement is subject to 12% final withholding VAT.

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**Issues:**

1. Is A Co. deemed to have a permanent establishment (PE) in the Philippines by delivering goods to B Co.'s warehouse?
2. Is A Co. subject to Philippine income tax on its business profits?
3. Is A Co.'s sale of goods to B Co. subject to VAT?

**Ruling:**

1. No. Although A Co. agreed to deliver the goods to B Co.'s warehouse, the use of the warehouse is considered to be for the benefit of B Co., and is not for the purpose of establishing A Co.'s fixed place of business. If any, the relation between the warehouse and A Co. is merely to attain the ultimate objective of carrying out the Just-in-Time Inventory Agreement.
2. No. Under Article 7 in relation to Article 5 of the RP-China Tax Treaty, the business profits of A Co. shall be taxable in the Philippines only if it maintains a PE situated in the Philippines, and only so much as are attributable to the PE. Since A Co. is not deemed to have a PE in the Philippines, it is exempt from tax on business profits from the sale of goods to B Co.
3. Yes. A Co.'s sale of magnetic heads to B Co. is subject to 12% VAT under Section 106(A) of the Tax Code. For this purpose, B Co., being the withholding agent and payor in control of the payment, shall be responsible for the withholding of the 12% final VAT on such business profits before making any payment to A Co.

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## **BIR Issuances**

RR No. 18-2013 amends certain sections of RR No. 12-99 on the due process requirement in the issuance of deficiency tax assessments.

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### **Revenue Regulations No. 18-2013 dated November 28, 2013**

- ▶ Section 3 of RR No. 12-99 is amended to delete Section 3.1.1, which provides for the preparation of a Notice of Informal Conference, and to prescribe other provisions for the assessment of tax liabilities.
- ▶ The issuance of a deficiency tax assessment will now follow the following procedures:
  - ▶ **Preliminary Assessment Notice (PAN)**
    - ▶ If, after review and evaluation by the Commissioner or his duly authorized representative, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency taxes, a PAN shall be issued to the taxpayer for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based.
    - ▶ If the taxpayer fails to respond within 15 days from date of receipt of the PAN, he shall be considered in default, in which case a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
    - ▶ If, within 15 days from date of receipt of the PAN, the taxpayer responds that he/it disagrees with the findings of deficiency taxes, an FLD/FAN shall be issued within 15 days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

- ▶ However, a PAN shall not be required in any of the following cases, in which cases an FLD/FAN shall be issued outright:
  1. When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or
  2. When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
  3. When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax (CWT) for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
  4. When the excise tax due on excisable articles has not been paid; or
  5. When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
  
- ▶ **Formal Letter of Demand and Final Assessment Notice (FLD/FAN)**
  - ▶ The FLD/FAN shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void.
  
- ▶ **Disputed Assessment**
  - ▶ The taxpayer or its authorized representative or tax agent may protest administratively against the FLD/FAN within 30 days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
    1. Request for reconsideration – refers to a plea for re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
    2. Request for reinvestigation – refers to a plea for re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
  
  - ▶ The taxpayer shall state in his protest:
    1. The nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation;

2. Date of the assessment notice; and
3. The applicable law, rules and regulations, or jurisprudence on which his protest is based;

otherwise, the protest shall be considered void and without force and effect.

- ▶ If there are several issues involved in the FLD/FAN but the taxpayer only disputes or protests against the validity of some of the issues raised, the assessment attributable to the undisputed issue or issues shall become final, executory and demandable, and the taxpayer shall be required to pay the deficiency taxes attributable thereto. In this case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax or taxes, inclusive of the applicable surcharge and/or interest.
- ▶ If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the issues on which the assessment is based, the same shall be considered an undisputed issue or issues. In this case, the assessment attributable thereto shall become final, executory and demandable, and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.
- ▶ For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within 60 days from date of filing his letter of protest; otherwise, the assessment shall become final. The 60-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. The term “the assessment shall become final” shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the protest shall consequently be denied.
- ▶ If the taxpayer fails to file a valid protest against the FLD/FAN within 30 days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.
- ▶ If the protest is denied, in whole or in part, by the Commissioner’s duly authorized representative, the taxpayer may either:
  1. Appeal to the Court of Tax Appeals (CTA) within 30 days from date of receipt of the said decision; or
  2. Elevate his protest through request for reconsideration to the Commissioner within 30 days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal, and only issues raised in the decision of the Commissioner’s duly authorized representative shall be entertained by the Commissioner.

- ▶ If the protest is not acted upon by the Commissioner's duly authorized representative within 180 days counted from the date of filing of the protest in case of a request reconsideration, or from date of submission by the taxpayer of the required documents within 60 days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either:
  1. Appeal to the CTA within 30 days after the expiration of the 180-day period; or
  2. Await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within 30 days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the 30-day period to appeal to the CTA.

If the protest or administrative appeal is not acted upon by the Commissioner within 180 days counted from the date of filing of the protest, the taxpayer may either:

- (i) Appeal to the CTA within 30 days after the expiration of the 180-day period; or
- (ii) Await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision.

However, in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (i) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (ii) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive, and resort to one bars the application of the other.

- ▶ ***Final Decision on a Disputed Assessment (FDDA)***

- ▶ The decision of the Commissioner or his duly authorized representative shall state:
  1. The facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based; otherwise, the decision shall be void; and
  2. That the same is his final decision.

- ▶ ***Modes of Service***

- ▶ The required notice (PAN/FLD/FAN/FDDA) to the taxpayer may be served by the Commissioner or his duly authorized representative through the following modes:



1. Through personal service by delivering personally a copy to the taxpayer at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
2. In case personal service is not practicable, by substituted service or by mail.
  - a. Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:
    - ▶ The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.
    - ▶ If the known address is (i) a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof; or (ii) if the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.
    - ▶ If no person is found in the party's registered or known address, or if the party is found at his registered or known address or any other place but refuses to receive the notice, the revenue officers concerned shall bring a barangay official and two disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

*"Disinterested witnesses"* refers to persons of legal age other than BIR employees.
  - b. Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party, with instruction to the Postmaster to return the mail to the sender after 10 days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oaths before a Notary Public or any person authorized to administer oath under Section 14 of the Tax Code, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

3. Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer.”
- ▶ Section 5 of RR No. 12-99 is also amended by modifying Section 5.5 thereof which provides for the procedure in computing for the tax and/or applicable surcharge. In cases of late payment of a deficiency tax assessed, the taxpayer shall be liable for the delinquency interest provided under Section 249 (C)(3) of the 1997 Tax Code. Section 5.5 of RR No. 12-99 shall now read as follows:

“5.5 Late payment of a deficiency tax assessed. - In general, the deficiency tax assessed shall be paid by the taxpayer within the time prescribed in the notice and demand; otherwise, such taxpayer shall be liable for the delinquency interest incident to late payment.

*Illustration 1:* Based on the above Illustration No. 3, Scenario 4, assuming that the calendar year 1997 deficiency income tax assessment against XYZ CORPORATION, in the amount of P304,771.67, is not paid by June 30, 1999, the deadline for payment of the assessment, and assuming further that this assessment has already become final and collectible. In this case, such corporation shall be considered late in payment of the said assessment. Assuming, further, that the corporation pays its tax assessment only by July 31, 1999, the delinquency interest for late payment shall be computed as follows:

Calendar Year 1997		
Income tax due per investigation		P350,000.00
Less: Income tax paid per return		P175,000.00
Deficiency income tax		P175,000.00
Add: 50% surcharge for filing a fraudulent or false return (P175,000.00 times 50%)		P 87,500.00
20% int. p.a. fr. 4-15-98 to 7-31-99 (P175,000.00 times .258630)		P 45,260.27
Total amount due		P307,760.27
Add: 20% delinquency interest p.a. from 7-1-99 to 7-31-99		
Basic Tax	175,000.00	
Surcharge	87,500.00	
20% int. p.a. fr. 4-15-98 to 6-30-99	42,271.67	
Total	304,771.67	
(P304,771.67 times .0166667)		P 5,079.54
Total amount due (excluding suggested compromise penalty for late payment)		P312,839.81

*Illustration 2:* Based on the immediately preceding Illustration, assuming that the calendar year 1997 deficiency income tax assessment against XYZ CORPORATION, in the amount of P304,771.67, is not paid by June 30, 1999, the deadline for payment of the assessment but is instead timely protested. Assuming further that after exhaustion of all administrative remedies, the assessment was upheld and became final, executory and demandable on July 1, 2000. However, payment was made by the taxpayer only on June 30, 2002. In this case, such corporation shall be considered

late in payment of the said assessment. The civil penalties for late payment shall be computed as follows:

Calendar Year 1997		
Income tax due per investigation		P350,000.00
Less: Income tax paid per return		P175,000.00
Deficiency income tax		P175,000.00
Add: 50% surcharge for filing a fraudulent or false return (P175,000.00 times 50%)		P 87,500.00
20% int. p.a. fr. 4-15-98 to 6-30-2002 (P175,000.00 times .841644)		P147,287.70
Total amount due		P409,787.70
Add: 20% delinquency interest p.a. from 7-2-2000 to 6-30-2002		
Basic Tax	175,000.00	
Surcharge	87,500.00	
20% int. p.a. fr. 4-15-98 to 7-1-00 (.4427397)	77,479.45	
Total	339,979.45	
(P339,979.45 times .3989041)		P135,619.20
Total amount due (excluding suggested compromise penalty for late payment)		P545,406.90

*Illustration 3:* Assuming that in calendar year 1997, XYZ CORPORATION filed a false or fraudulent return and was assessed of deficiency basic income tax amounting to Php100,000. Assuming further that XYZ CORPORATION timely protested the said assessment. After exhaustion of all administrative remedies, the assessment was upheld and became final, executory and demandable on April 15, 2001. However, payment was made by the taxpayer only on April 15, 2003. In this case, such corporation shall be considered late in payment of the said assessment. The civil penalties for late payment shall be computed as follows:

Calendar Year 1997		
Total deficiency income tax assessment		P100,000.00
Add: 50% surcharge for filing a fraudulent or false return		P 50,000.00
20% interest p.a. from 4-15-1998 to 4-15-2003 (P100,000 x 20% x 5)		P100,000.00
Delinquency Interest 20% interest p.a. from 4-15-2001 to 4-15-2003		
Basic Tax	100,000.00	
Surcharge	50,000.00	
20% int. p.a. fr. 4-15-98 to 4-15-01	60,000.00	
Total	210,000.00	
(P210,000.00 x 20% x 2)		P 84,000.00
Total Amount Due As of April 15, 2003 (excluding suggested compromise penalty for late payment)		P334,000.00

- ▶ RR No. 18-2013 shall take effect after 15 days following publication in any newspaper of general circulation.

*[Editor's Note: RR No. 18-2013 was published in the Manila Bulletin on November 30, 2013 and the Philippine Star on December 3, 2013.]*

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RMC No. 70-2013 clarifies the list of documentary requirements for registration, issuance of TINs, updates and transfers of business registration originally prescribed under "Annex A" of RR No. 7-2012

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### **Revenue Memorandum Circular No. 70-2013 dated November 12, 2013**

The following are the documentary requirements for registration, issuance of TINs, updates and transfers of business registration to another Revenue District Office (RDO):

#### **1. SELF-EMPLOYED INDIVIDUALS, ESTATES AND TRUSTS AND THEIR BRANCHES:**

- ▶ Photocopy of Mayor's Business Permit (or duly received Application for Mayor's Business Permit, if the former is still in process with the LGU) and /or PTR issued by the LGU; and NSO Certified Birth Certificate of the applicant;

Other documents for submission (only if applicable):

- Contract of Lease;
  - DTI Certificate of Registration of Business Name, if a business trade name shall be used;
  - Certificate of Authority if Barangay Micro Business Enterprises (BMBE) registered entity;
  - Proof of Registration/Permit to Operate with the Board of Investments (BOI)/Board of Investments for Autonomous Region for Muslim Mindanao (BOI-ARMM), the Philippine Export Zone Authority (PEZA), the Bases Conversion Development Authority (BCDA) and the Subic Bay Metropolitan Authority (SBMA);
  - Sworn Statement of Capital;
  - Waiver of husband to claim additional exemption;
  - Marriage Contract; and
  - NSO Certified Birth Certificate of declared dependents.
- ▶ For Non-Residents - In addition to the above applicable requirements, a Working Permit;
  - ▶ For Franchise Holders/Franchisees - In addition to the above applicable requirements, a photocopy of the Franchise Agreement;
  - ▶ For Trusts - In addition to the requirements enumerated under "a" to "h" above, a photocopy of the trust agreement;
  - ▶ For Estates (under judicial settlement) - In addition to the requirements enumerated under "a" to "h" above, a photocopy of the Death Certificate of the deceased and judicial settlement;
  - ▶ In the case of registration of branches/facility types:
    - Copy of the Certificate of Registration (COR) of the Head Office for facility types to be used by the Head Office and COR of the branch for facility types to be used by a particular branch;
    - Mayor's Business Permit or duly received Application for Mayor's Business Permit, if the former is still in process with the LGU;

- c. DTI Certificate of Registration of Business Name, if a business trade name shall be used, if applicable; and
- d. Contract of Lease, if applicable.

**2. LOCAL EMPLOYEES**

- a. NSO Certified Birth Certificate of declared dependents, if any;
- b. Waiver of husband on his right to claim additional exemptions, if wife will claim;
- c. Marriage Contract, if applicable
- d. NSO Certified Birth Certificate of the applicant or;
- e. Passport (in case of non-resident alien not engaged in trade or business)

**3. CORPORATIONS, PARTNERSHIP, COOPERATIVES, ASSOCIATIONS (WHETHER TAXABLE OR NON-TAXABLE), AND ITS BRANCHES AND FACILITIES**

- ▶ For corporations/partnerships -
  - a. Copy of SEC Registration and Articles of Incorporation/Articles of Partnerships, as the case may be;
  - b. Copy of Mayor's Business Permit or duly received Application for Mayor's Business Permit, if the former is still in process with the LGU.

Other documents for submission (only if applicable):

- i. Contract of Lease;
  - ii. Certificate of Authority, if BMBE-registered entity;
  - iii. Franchise Agreement;
  - iv. License to Do Business in the Philippines, in case of resident foreign corporation;
  - v. Proof of Registration/Permit to Operate with BOI, BOI-ARMM, SBMA, BCDA, PEZA.
- ▶ For GAIs, GOCCs and LGUs - Copy of the Unit or Agency's Charter;
  - ▶ For Cooperatives - Copy of the Cooperative Development Authority (CDA) Certificate of Registration and the Articles of Cooperation;
  - ▶ For Home Owner's Association - Copy of the Certificate of Registration issued by the Housing and Land Use Regulatory Board (HLURB) and the Articles of Association;
  - ▶ In the case of registration of branch/facility type:
    - a. Copy of the COR of the Head Office for facility types to be used by the Head Office and COR of the branch for facility types to be used by a particular branch;
    - b. Mayor's Business Permit or duly received Application for Mayor's Business Permit, if the former is not yet available; and
    - c. Contract of Lease, if applicable.

#### 4. **PURELY TIN ISSUANCE**

- ▶ Individual:
  - a. NSO Certified Birth Certificate of the applicant;
  - b. Passport (in the case of a non-resident alien not engaged in trade or business);
  - c. Marriage Contract, if the applicant is a married woman
- ▶ Non-individual:
  - a. Document to support the transaction between a non-resident foreign corporation and the withholding agent (e.g., bank certification, invoice, contract)
  - b. Additional requirements for transactions involving One Time Transactions (ONETT):
    - i. Deed of Sale/Deed of Assignment/Mortgage Document, whichever is applicable in case of sale, assignment, mortgage, purchase and/or disposal of shares of stock and/or real estate properties;
    - ii. Deed of Donation for donation of properties or transfers by gratuitous title;
    - iii. Transfer of properties by succession -
      - ▶ Deed of Extrajudicial Settlement of the Estate/Judicial Settlement of Estate,
      - ▶ Death certificate of the decedent;
    - iv. Cash Invoice or Official Receipt for brand new vehicles in case of claim of winnings involving personal properties subject to registration;
    - v. Deed of Sale or COR with the LTO, in the case of a sale of a second-hand vehicle;
    - vi. Certification from an Awarding Company/Person in case of a Claim of Winnings.

#### 5. **UPDATES/TRANSFER OF RECORDS/TRANSFER OF REGISTRATION TO ANOTHER RDO**

- ▶ Additional Documentary Requirements for Transfer of Business Registration to Another RDO (Head Office and/or Branch):
  - a. Original copy of Certificate of Registration;
  - b. Inventory list of unused principal and supplementary receipts/invoices;
  - c. Unused principal and supplementary receipts/invoices for re-stamping and sketch of place of production (if taxpayer is subject to Excise Tax);
- ▶ Documentary Requirements for Other Updates -
  - ▶ Change in Registered Name/Trade Name - Original Copy of the Certificate of Registration and the Amended SEC Registration/DTI Certificate;
  - ▶ Change/Add in Registered Activities/Line of Business - Original Copy of the Certificate of Registration;

- ▶ Change/Add Tax type details - Original Copy of the Certificate of Registration;
- ▶ Update of Books of Accounts - Photocopy of the first page of the previously approved books;
- ▶ Change in Accounting Period - BIR written approval of the change and Photocopy of short period return filed.

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RMC No. 73-2013 amends RMC No. 31-2013 with respect to the appropriate tax treatment of individuals employed by the UN and its Specialized Agencies, and prescribes additional guidelines on the tax filing obligations of the individual taxpayers concerned.

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**Revenue Memorandum Circular No. 73-2013 dated November 26, 2013**

- ▶ As amended, Section 2(c) of RMC No. 31-2013 clarifies the scope of the tax exemption of the following individual taxpayers, as follows:
  - ▶ ***Those Employed by the UN***
    - ▶ Sections 17 and 18 of Article V of the Convention on the Privileges and Immunities of the United Nations (the "UN Privileges Convention" adopted on 13 February 1946) provide:

"ARTICLE V  
Officials

xxx

SECTION 17. The Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

SECTION 18. Officials of the United Nations shall:

xxx

(b) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations; xxx"

- ▶ Based on above provisions of the UN Privileges Convention, officials of the UN shall be exempt from Philippine income tax, regardless of their nationality or place of residence. However, applying Section 17, only those officials whose names have been communicated to the Philippine government (through the Department of Foreign Affairs) shall be covered by the tax exemption.
- ▶ The above provisions of the UN Privileges Convention apply to those officials employed by the United Nations, its (i) principal organs [the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat], and (ii) those employed by its agencies, departments, offices, funds, programmes and bodies [United Nations Development Programme (UNDP), United Nations Population Fund (UNFPA), Office of the United Nations High

Commissioner for Refugees (UNHCR), United Nations Children's Fund (UNICEF), World Food Programme (WFP), Office of the United Nations High Commissioner for Human Rights (OHCHR), and other agencies, departments, offices, funds, programmes and bodies as may be confirmed by the United Nations], excluding its Specialized Agencies.

▶ ***Those Employed by the Specialized Agencies of the UN***

- ▶ Sections 18 and 19 of Article VI of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations (the "SA Convention" adopted 21 November 1947) provide:

"ARTICLE VI  
Officials

SECTION 18

Each specialized agency will specify the categories of officials to which the provisions of this article and of article VIII shall apply. It shall communicate them to the Governments of all States parties to this Convention in respect of that agency and to the Secretary-General of the United Nations. The names of the officials included in these categories shall from time to time be made known to the above-mentioned Governments.

SECTION 19

Officials of the specialized agencies shall:

xxx

- (b) Enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by officials of the United Nations;"

- ▶ The UN Specialized Agencies are enumerated in Section 1(ii) of Article I of the same Convention as follows:

- 1) International Labour Organization (ILO)
- 2) The Food and Agriculture Organization of the United Nations (FAO)
- 3) The United Nations Educational, Scientific and Cultural Organization (UNESCO)
- 4) The International Civil Aviation Organization (ICAO)
- 5) The International Monetary Fund (IMF)
- 6) The International Bank for Reconstruction and Development (IBRD)
- 7) The World Health Organization (WHO)
- 8) The Universal Postal Union (UPU)
- 9) The International Telecommunication Union (ITU)
- 10) Any other agency in relationship with the United Nations in accordance with Articles 57 and 63 of the UN Charter."



- ▶ Applying Section 19(b) of the SA Convention in relation to Section 18(b) of the UN Privileges Convention, officials of the UN Specialized Agencies shall be exempt from Philippine income tax, regardless of their nationality or place of residence.

However, in order that the tax immunities under the SA Convention may be properly invoked, the Philippine Government should have acceded to the terms of the Convention and indicated in the instrument of accession the specialized agencies with respect to which it seeks to apply the provisions of the Convention. Other Specialized Agencies not included in the instrument of accession may be nevertheless be covered by the Convention upon the submission of subsequent written notification to the UN Secretary General

- ▶ Based on available information, the following Specialized Agencies are covered by proper instruments of accession or written notifications by the Philippine Government:

- 1) ILO
- 2) FAO
- 3) UNESCO
- 4) ICAO
- 5) IMF
- 6) IBRD
- 7) WHO
- 8) UPU
- 9) ITU
- 10) International Finance Corporation (IFC)

For this reason, officials of the above UN Specialized Agencies shall be exempt from Philippine income tax, regardless of their nationality or place of residence. This rule shall apply notwithstanding disparities in the immunities provided in the constitutional instruments of the Specialized Agencies.

- ▶ However, under Section 18 of the SA Convention, the names of officials of the Specialized Agencies enumerated above must be properly communicated to the Philippine Government (through the Department of Foreign Affairs).
  - ▶ The tax immunities and privileges of Specialized Agencies not covered by proper instruments of accession or written notification shall be taken from their respective constitutional instruments as agreed to by the Philippine Government. Such Specialized Agencies cannot claim tax immunities and privileges beyond those provided in their constitutional instruments, notwithstanding the provision of more comprehensive benefits under the SA Convention.
- ▶ Section 2(d) of RMC No. 31-2013 is amended to include the International Committee of the Red Cross (ICRC), as follows:

- ▶ Paragraphs 2, 3 and 4 of Article 5 of the Headquarters Agreement between the Government of the Republic of the Philippines and the ICRC provide as follows:

"Article 5  
ICRC DELEGATES AND ALIEN EMPLOYEES

xxx

2. ICRC Delegates, who by definition are Swiss nationals, and alien employees, their spouses and dependent members of their families shall enjoy a status similar to that accorded to members and employees of missions of international and intergovernmental organizations and shall enjoy the privileges and immunities provided in the present Agreement.
  3. The ICRC Delegates and alien employees shall:
    - (a) Be immune from the jurisdiction of the judicial or administrative authorities of the Philippines in respect to acts performed in the exercise of their official functions;
    - (b) Not be obliged to give evidence as witness in matters relating to their official function;
    - (c) Be exempt from taxation in respect of the salaries and emoluments paid to them by the ICRC; xxx"
  4. It is understood that these privileges and immunities shall not be enjoyed by Filipino nationals working for the ICRC except for paragraphs 3(a) and 3(b)."
- ▶ Thus, only Swiss nationals and alien employees, including their spouses and dependent members of their families, shall be exempt from Philippine income tax.
  - ▶ As amended, Section 3 of RMC No. 31-2013 clarifies the filing of income tax returns and declaration of compensation income, as follows:
    - ▶ Philippine nationals and alien individuals who are NOT covered by tax exemptions or immunities under duly recognized international agreements or local laws shall file their annual income tax returns using BIR Form No. 1700 or 1701, as may be applicable, on or before the 15<sup>th</sup> day of April each year as follows:
      1. For individual filing -
        - a. Fill out the annual income tax returns in triplicate declaring therein the amount of their respective income for the preceding taxable year for services rendered or performed for, among others, foreign government embassy/diplomatic mission, agency or international organization;
        - b. Proceed to the Revenue District Office (RDO) where registered;

- c. File the duly accomplished annual income tax returns with the respective RDO, Authorized Agent Bank, or other proper office which has jurisdiction over the employee's legal residence or principal place of business. It may also be filed with the RDO or Authorized Agent Bank where the principal office of his employer is situated; and
- d. Receive copy of the duly stamped and validated annual income tax returns from the concerned RDO or Authorized Agent Bank.

2. Option to be Constituted as Withholding Agent/ Substituted Filing -

Foreign governments/embassies/diplomatic missions and international organizations acting as employers of Philippine nationals and alien individuals who are not exempt from the payment of income tax under international agreements, may, at its option, act as withholding agent for the Philippine Government and file the income tax returns of their respective employees through substituted filing.

Foreign governments/embassies/diplomatic missions and international organizations exercising this option shall register with the RDO having jurisdiction of the place where the principal office of such foreign government/embassy/diplomatic mission and international organization is located. The same procedure and requirements on withholding of taxes and substituted filing of income tax returns provided under Section 72 (A), Chapter X, Title II of the Tax Code, as implemented by Revenue Regulations No. 02-98, as amended, shall be followed.

- ▶ Philippine nationals and alien individuals who are covered by tax exemptions or immunities under duly recognized international agreements are enjoined to file their annual income tax returns (BIR Form No. 1700 or 1701, as may be applicable) as follows:

1. For individual filing -

- a. Fill out the annual income tax returns in triplicate indicating the tax exemption pursuant to the specific international agreement (e.g., UN Privileges Convention, SA Convention) in item no. 67(A) or 122(A) of BIR Form No. 1700 or 1701, respectively;
- b. Proceed to the RDO where registered;
- c. File the duly accomplished annual income tax returns on or before the 15<sup>th</sup> day of April of each year covering compensation income for the preceding taxable year, together with the Certificate of Compensation Received/Statement of Earnings for the taxable year indicating the amount of monthly income received; and
- d. Receive copy of the duly stamped and validated annual income tax returns from the concerned RDO.

2. Alternative filing (Optional) -

- a. Duly authorized/designated personnel of the international organization may, through the International Tax Affairs Division (ITAD), in coordination with the Department of Foreign Affairs,

inform the RDO where the international organization is registered of the latter's willingness to file its employees' income tax returns in order to ensure systematic filing;

- b. The concerned employees shall fill out their annual income tax returns in triplicate indicating the tax exemption pursuant to the specific international agreement (e.g., UN Privileges Convention, SA Convention) in item no. 67(A) or 122(A) of BIR Form No. 1700 or 1701, respectively;
- c. Duly authorized/designated personnel shall proceed to the designated filing center as identified by the concerned RDO;
- d. Duly authorized/designated personnel shall file the duly accomplished annual income tax returns on or before the 15<sup>th</sup> day of April of each year covering compensation income of the employees for the preceding taxable year, together with the Certificate of Compensation Received/Statement of Earnings for the taxable year indicating the amount of monthly income received; and
- e. Duly authorized/designated personnel shall receive a copy of the duly stamped and validated annual income tax returns from the concerned RDO and provide the same to the concerned employees.

- ▶ Section 5 of RMC No. 31-2013 is amended to read as follows:

“SECTION 5. CONFIRMATION OF TAX EXEMPTION/TAX TREATMENT.— International organizations maintaining offices, headquarters or operation in the Philippines and/or their respective employees claiming exemptions pursuant to the terms and provisions of international agreements or laws granting privileges to employees of international organizations shall file an application for confirmation of tax exemption/tax treatment with the International Tax Affairs Division (ITAD) of the Bureau of Internal Revenue.”

The foregoing shall not apply to international organizations and their employees already covered by this Circular.

- ▶ RMC No. 73-2013 shall take effect immediately.

## **BSP Issuances**

### **BSP Circular No. 817 dated November 6, 2013**

- ▶ The statement of principles in determining banks' capacity to offer housing microfinance was deleted.
- ▶ Banks planning to grant housing microfinance loans shall comply with the following requirements:
  1. The bank must have a track record of at least two years in implementing sustainable microfinance programs;
  2. The bank must have an appropriate housing microfinance product manual, and loan officers must be able to communicate the details of the program to the clients;

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Circular No. 817 amends Subsections X361.5 and X361.7 of the MORB on the granting of housing microfinance and micro-agri loans.

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3. Verification of the following:
    - i. Latest CAMELS rating of at least "3" and management score of at least "3";
    - ii. CAR of not lower than 12%; no major supervisory concerns as to warrant initiation of Prompt Corrective Action (PCA); and
    - iii. No arrearages in microfinance borrowings; and
    - iv. Certification of the banks' commitment to implement the housing microfinance product following the guidelines in the submitted manual.
- ▶ The application procedure under paragraph (4) was deleted.
  - ▶ Housing microfinance loans are no longer eligible as alternative compliance with the mandatory credit allocation to agrarian reform and other agricultural credit, as well as for rediscounting with the BSP.
  - ▶ As an additional requirement, the bank president or officer of equivalent rank, and the compliance officer shall submit a notarized certificate of compliance with the minimum prudential requirements and prescribed product characteristics and features, to be submitted within 15 banking days from the date of meeting of the Board of Directors, approving the microfinance product.
  - ▶ Submission of false certification or failure to comply with the prescribed prudential requirements warrants the imposition of penalties, such as a prohibition to grant new housing microfinance loans and other administrative sanctions.
  - ▶ Micro-agri loans are now subject to the same requirements and same penalties for non-compliance as those governing microfinance loans.
  - ▶ Circular 817 takes effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

*[Editor's Note: Circular No. 817 was published in Manila Bulletin on November 12, 2013.]*

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Circular No. 818 amends the Foreign Exchange Regulations.

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**BSP Circular No. 818 dated November 6, 2013**

- ▶ The application to purchase foreign exchange and supporting documents shall be submitted to AABs/AAB-forex corporations to allow the sale of foreign exchange to pay for import obligations.
- ▶ Foreign borrowings of banks shall also be subject to the pertinent provisions of the MORB, as well as other applicable laws, rules and regulations.
- ▶ Short-term interbank loans do not require prior BSP approval.
- ▶ AABs and AAB-forex corporations may sell foreign exchange without prior BSP approval for prepayments of BSP-registered private sector loans that are not publicly-guaranteed, subject to the requirements set forth under the Foreign Exchange Regulations, Section 29 paragraph (4). Submission of notice of intention to prepay under said Section 29 paragraph (4) (a) does not apply to short-term private sector loans.

- ▶ Circular No. 818 takes effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

*[Editor's Note: Circular No. 818 was published in Philippine Daily Inquirer on November 12, 2013.]*

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Circular No. 819 amends Circular No. 769 dated 26 September 2012, which prescribes the guidelines on requests for a Monetary Board opinion on the monetary and balance of payments implications of proposed domestic borrowings by LGUs pursuant to RA No. 7653.

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### **BSP Circular No. 819 dated November 12, 2013**

- ▶ The written request for a Monetary Board (MB) opinion on the monetary and balance of payments implications of its proposed borrowing shall be submitted directly by the local government units (LGUs). Submission through the lending bank or other authorized representative is no longer permitted.
- ▶ The six-month validity period of the MB opinion refers to the time within which the proposed loan is to be released, and commences on the date of the MB resolution pertaining to the proposed loan.
- ▶ The post-borrowing report under Section III shall be submitted by the LGU to the BSP, through a letter addressed to the Director, Department of Economic Research of through electronic mail addressed to mbopinion\_der@bsp.gov.ph, within 30 calendar days from the date of the full release of loan proceeds.
- ▶ The lending banks shall submit to the BSP, through the same means provided above, a semestral post-loan release report on LGU loans granted in full within the last six months within 30 calendar days after the end of each semester.
- ▶ The following are additional documents required to support the request for MB opinion:
  1. Indication by the LGU in its letter of request whether the proceeds of the proposed borrowing will be used for importation; and
  2. Certification from the LGU indicating that no disbursement, in full or partial amounts, has been made of the loan for which it is requesting an MB opinion for.
- ▶ Circular No. 819 takes effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

*[Editor's Note: Circular No. 819 was published in Malaya Business Insight on November 15, 2013.]*

## **BOC Issuance**

### **Customs Memorandum Order No. 8-2013, dated November 11, 2013**

- ▶ **Creation of a One-Stop Shop (OSS)**
  - ▶ All District Collectors are directed to establish an OSS in their respective ports. The OSS shall be responsible for coordinating with other government agencies concerned in the processing and documentation of donated relief goods/articles/equipment to effect the immediate release from customs custody.
  - ▶ This OSS shall be available 24 hours, 7 days a week, to process the release of foreign donated articles.

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CMO No. 8-2013 creates an OSS to expedite the processing and release of importations of donated relief goods/ articles/ equipment intended for the calamity-declared areas and victims of disasters/calamities.

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▶ **Initial Requirements for the Release of Foreign Donations**

The following requirements shall be submitted to the OSS for the conditional release of donated foreign relief goods / articles / equipment falling under this Order:

- ▶ Letter of Intent to Donate the Goods;
- ▶ Bill of Lading /Airway Bill;
- ▶ Packing List and /or Commercial Invoice; and
- ▶ Other documents that may be required by the OSS.

▶ **Operational Provisions**

- ▶ Prior to the arrival of shipment, the donor/intended donee or its duly authorized representatives shall inform the BOC of the incoming donation.
- ▶ All importations of donated relief goods/articles/equipment shall be for the account of the Department of Social Welfare and Development (DSWD) or any DSWD registered relief organization.
- ▶ The letter of intent to donate the goods and the shipping and /or commercial invoice documents such as bill of lading/airway bill, packing list and invoice shall be submitted to the OSS for evaluation.
- ▶ In case of discrepancy in the name of the consignee appearing in the importation documents or where the intent to donate the goods to calamity-declared areas and victims of disasters/calamities is satisfactorily shown by sufficient documents, the OSS shall cause the correction upon submission by the original consignee of a notarized waiver and deed of undertaking.
- ▶ Upon favorable endorsement of the DSWD (for food and clothing), DOH/BFAD (for medicines and other pharmaceutical products), DA (for agricultural products in their natural state) and DND (for rehabilitation equipment), and upon certification by the DOF of their duty-free status, the OSS shall process and issue the necessary endorsement/clearance for the conditional release of the imported donated relief articles.
- ▶ Within 24 hours from filing of the Entry, the BOC shall release the donated goods/ articles/equipment to the DSWD/DSWD Registered Relief Organization subject to compliance with existing laws, rules and regulations.
- ▶ Receipt of importations consigned to any DSWD registered relief organization shall be jointly acknowledged by DSWD and the relief organization with the commitment or undertaking that they shall submit the other required documents to the BOC within fifteen (15) days from the release of the shipment from customs custody.
- ▶ Prohibited importations shall *ipso facto* be forfeited in favor of the government pursuant to applicable existing Customs laws, rules and regulations.
- ▶ Donations of used clothing shall be consigned only to DSWD. Used clothing found in shipments represented/declared as relief goods and consigned to entities other than the DSWD shall be *ipso facto* forfeited pursuant to RA No. 4653, and the same shall be immediately turned over to the DSWD.

▶ **Post Release Requirements**

- ▶ The DSWD shall provide the OSS with the corresponding distribution reports within 30 days from distribution of the relief goods/articles/ equipment covered by PMO 36.
- ▶ DOF Indorsement/PMO Clearance for avilment of the exemptions/deferred payment scheme and of duties and taxes, or taxes only shall be submitted to the concerned Port within 15 days from release of the shipment.

- ▶ The District Office concerned shall submit a report of the shipments processed thru OSS to the Collection Service, copy furnished the Office of the Commissioner of Customs within 10 days from receipt of the DOF Indorsement/ PMO Clearance.
- ▶ CMO No. 8-2013 shall only be implemented for the duration of the emergency disaster situation.
- ▶ CMO No. 8-2013 shall take effect immediately.

## **BOI Issuance**

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BOI Memorandum Order No. 059 publishes the 2013 Investments Priorities Plan (IPP).

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### **Memorandum Order No. 059 dated November 13, 2013**

#### **1. Entitlement to Incentives**

The extent of entitlement to incentives shall be based on the project's net value added, job generation, multiplier effect and measured capacity.

#### **2. Preferred Activities**

##### **A. Agriculture/Agribusiness and Fishery**

- ▶ Commercial production and processing of agricultural, herbal and fishery products (including their by-products and wastes)
- ▶ Agriculture and fishery-related activities such as irrigation, post-harvest, cold storage, blast freezing and the production of fertilizers and pesticides.

##### **B. Creative Industries and Knowledge-Based Services**

- ▶ Business Process Outsourcing (BPO) activities, IT and IT-enabled services that involve original content

##### **C. Shipbuilding**

- ▶ Construction and repair of ships including shipbreaking/ shiprecycling

##### **D. Mass Housing**

- ▶ Development of low-cost mass housing
- ▶ Manufacture of modular housing components preferably using indigenous materials

##### **E. Iron and Steel**

- ▶ Basic iron and steel products, long steel products (billets and reinforcing steel bars), and flat hot-/cold-rolled products

##### **F. Energy**

- ▶ Exploration, development, and/or utilization of energy sources adopting environmentally-friendly technologies

##### **G. Infrastructure**

- ▶ Transport, water, logistics, waste management facilities, physical infrastructure (tollways, railways and telecommunication facilities) and PPP projects



#### **H. Research and Development**

- ▶ R&D activities and establishment of research/testing laboratories, Centers of Excellence and technical vocational education and training institutions

#### **I. Green Projects**

- ▶ Manufacture/ assembly of goods and the establishment of energy-efficiency related facilities (such district cooling systems), where utilization of which would significantly lead to either the efficient use of energy, natural resources or raw materials, minimize pollution or reduce greenhouse gas emissions

#### **J. Motor Vehicles**

- ▶ Manufacture/assembly of motor vehicles, including alternative fuel vehicles (AFVs) and electronic vehicles (EVs) but excluding two-stroke motorcycles, and manufacture of motor vehicle parts and components.

#### **K. Strategic Projects**

- ▶ Projects that exhibit very high social economic returns that will significantly contribute to the country's economic development
- ▶ Approval will be upon determination of the Board in consultation with the Department of Finance (DOF), National Economic Development Authority (NEDA) and other appropriate government agencies.

#### **L. Hospital/ Medical Services**

- ▶ Establishment and operation of medical facilities including general and specialty hospitals, and other health facilities pursuant to Department of Health (DOH) Administrative Order (AO) 2012-0012.
- ▶ "Other Health Facilities" pursuant to DOH AO 2012-0012 include:
  - ▶ Primary Care Facilities
    - ▶ Infirmary/ Dispensary
    - ▶ Birthing homes
    - ▶ Medical out-patient clinics
    - ▶ OFW Clinics
    - ▶ Dental Clinics
  - ▶ Custodial Care Facilities
    - ▶ Psychiatric Care Facility
    - ▶ Drug Abuse Treatment and Rehabilitation Center (DATRC)
    - ▶ Sanitarium/ Leprosarium
    - ▶ Nursing Home
  - ▶ Diagnostic/Therapeutic Facilities
    - ▶ Laboratories
      - ▶ Clinical Lab/HIV
      - ▶ Blood Service Facilities
      - ▶ Drug Test Lab
      - ▶ NB Screening Lab
      - ▶ Water Lab
    - ▶ Ionizing machines as X-ray, CT scan, Mammography and others
    - ▶ Non-ionizing machines as Ultrasound, MRI and others
    - ▶ Nuclear medicine
  - ▶ Specialized Out-Patient Facility
    - ▶ Dialysis Clinic (DC)
    - ▶ Ambulatory Surgical Clinic (ASC)

- ▶ In-Vitro Fertilization (IVF) Centers
- ▶ Radiation Oncology Facility
- ▶ Oncology Center/Clinic

#### **M. Disaster Prevention, Mitigation and Recovery Projects**

- ▶ Projects that will prevent or mitigate adverse impact of calamities and disasters (e.g., installation of flood control systems, installation of early warning systems for typhoons, earthquake occurrences, tsunami, volcanic eruptions, dikes)
- ▶ Projects to rehabilitate areas affected by calamities and disasters (e.g., rebuilding of roads and bridges after earthquakes/floodings, volcanic eruptions, oil spill clean-up)
- ▶ Training for disaster preparedness, mitigation or recovery/ rehabilitation/ reconstruction.

### **3. Mandatory List**

#### **A. Industrial Tree Plantation**

- ▶ Extensive plantation of forest land of tree crops (except fruit trees) for commercial and industrial purposes

#### **B. Exploration, Mining, Quarrying and Processing of Minerals**

- ▶ Exploration and development of mineral resources, mining, quarrying and processing of metallic and non-metallic minerals

#### **C. Publication or Printing of Books/ Textbooks**

- ▶ Printing, re-printing, publication and content development of books and textbooks

#### **D. Refining, Storage, Marketing and Distribution of Petroleum Products**

- ▶ Refining, storage, distribution, and marketing of petroleum products

#### **E. Ecological Solid Waste Management**

- ▶ Establishment of waste recycling facilities

#### **F. Clean Water Projects**

- ▶ Establishment of wastewater treatment facilities and sewage collection integrated with treatment facilities and the adoption of water pollution control technology, cleaner production and waste minimization

#### **G. Rehabilitation, Self-Development and Self-Reliance of Persons with Disability**

- ▶ Manufacture of technical aids and appliances for the use and/or rehabilitation of persons with disability and the establishments of special schools, homes, residential communities or retirement villages solely to suit the needs and requirements of persons with disability

#### **H. Renewable Energy**

- ▶ Developers of renewable energy facilities, including hybrid systems

- ▶ Manufacturers, fabricators and suppliers of locally-produced renewable energy equipment and components.

#### I. Tourism

Tourism enterprises that are outside the tourism enterprise zones (TEZs) and are engaged in the following:

- ▶ Tourism transport services whether for land, sea and air transport for tourist use;
- ▶ Establishment and operation of:
  - ▶ Accommodation establishments such as but not limited to hotels, tourist inns, motels, pension houses, private homes for homestay, ecolodges, condotels, serviced apartments and bed and breakfast facilities;
  - ▶ Convention and exhibition facilities or “meetings, incentives, conventions and exhibition” (MICE) facilities;
  - ▶ Amusement parks;
  - ▶ Adventure and ecotourism facilities;
  - ▶ Sports facilities and recreational centers;
  - ▶ Theme parks;
  - ▶ Health and wellness facilities such as but not limited to spas;
  - ▶ Agri-tourism farms and facilities; and
  - ▶ Tourism training centers and institutes
- ▶ Development of retirement villages
- ▶ Restoration/ preservation and operation of historical shrines, landmarks and structures

#### 4. Export Activities

- ▶ Manufacture of export products, service exports and activities in support of exporters

#### 5. ARMM List

##### A. Export Activities

- ▶ Export trader and service exporters
- ▶ Support activities for exporters

##### B. Agriculture, Agribusiness/ Aquaculture & Fishery

- ▶ Production and processing of agricultural and fishery products (production of “Halal” meat and foods), vegetable oils, food crops, integrated coconut processing and plantation, activated carbon, production of beverage crops and plantation, seaweeds production and processing, fruit processing, aquaculture (fish production and processing), young/sweet corn production, potato and sweet potato plantation/processing, cutflower production/ processing, abaca plantation/ processing, oil pal plantation/ processing/refining and germinated oil palm seeds, feeds production, jathropa plantation/ processing, sugarcane plantation/processing and refineries, quality seed and seedlings of fruit trees and other planting materials propagated asexually or by tissue culture, pearl culture/processing, sericulture, feed production and production of plantation crops and other pharmaceuticals, medical herbs/essential oil plants, biomass, rubber, carrageenan, mangosteen and moringa.

### **C. Basic Industries**

- ▶ Production of pharmaceuticals such as antibiotics and medical devices, textile and textile products, inorganic and organic fertilizers, using solid wastes materials, mining exploration and development of mineral resources (mining and quarrying of metallic and non-metallic minerals which includes small scale as defined under PD No. 1899 but to exclude river beds in operations and processing of minerals such as beneficiation and other metallurgical methods) and cement production of at least 1.0 Million MTPY (clinker based).

### **D. Consumer Manufactures**

- ▶ Processing of rubber products to be integrated with plantation and leather products

### **E. Infrastructure and Services**

- ▶ Public utilities with developmental route of the five provinces and one city of ARMM and other adjacent cities and provinces such as common carriers, electric transmission/ distribution, water supply facilities/ waterways and sewerage systems, buses/cargo trucks, other specialized mass transport systems, power generation like hydro power, geothermal and natural gas, and telecommunications with international gateways

### **F. Industrial Service Facilities**

- ▶ Testing and quality control laboratories, training and demonstration centers, tool shops and similar facilities, metal casting, metal working, furniture, ceramics and food processing, petrochemical complex and industrial gases

### **G. Engineering Industries**

- ▶ Engineering products, electronics and telecommunication products, fabrication of construction materials and hydropower plant

### **H. Logistics**

- ▶ Transportation of cargo and/or passengers (air, sea and/or land) and freight/cargo forwarding

### **I. BIMP-EAGA Trade and Investment Enterprises**

- ▶ Covers entities located within or have their base of operation in the BIMP-EAGA (Brunei; Sabah and Sarawak in Malaysia; Maluku, Sulawesi, Kalimantan and Iringaya in Indonesia; and Mindanao and Palawan in the Philippines), who shall invest and engage in economic activity in the ARMM including Traditional Barter Trading System

### **J. Tourism**

- ▶ Establishment of tourism estate subject to guidelines developed jointly by Regional Board of Investments (RBOI)-ARMM, tourist accommodation facilities, tourist transport facilities and development of retirement villages which shall include health and medical facilities

including amenities required by the Philippine Retirement Authority (PRA), subject to the guidelines to be approved by RBOI-ARMM in consultation with the PRA, DOH, the Regional Planning and Development Office and other concerned agencies.

#### K. Health and Education Services and Facilities

- ▶ Establishment of private hospitals, medical clinics, wellness centers, primary education, secondary education, tertiary education (colleges, universities and vocational-technical schools) and ancillary services including any and all health and education related investment.

#### L. Halal Industry

- ▶ Services and production/ processing of products under Muslim or Islamic law.

*[Editor's Note: The 2013 IPP was published in the Manila Bulletin on November 20, 2013.]*

## SEC Opinions

### SEC-OGC Opinion No. 13-10 dated October 25, 2013

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When a corporation sends e-mail notices of meetings to stockholders and board of directors and such mode is provided for by the corporation's charter, resolutions passed by the corporation during said meetings are valid.

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#### **Facts:**

In practice, prior to a stockholder and board of directors' meeting, some corporations send notices to stockholders, directors or trustees through electronic mail (e-mail). The stockholder, director or trustee acknowledges the receipt of the notice sent also through e-mail.

#### **Issue:**

1. Does a notice of stockholders and board of directors' meeting which is sent through e-mail satisfy the requirement under the Corporation Code that the notice must be "in writing"?
2. Are resolutions passed by the corporation in meetings held wherein only e-mail notices were sent, albeit acknowledged by the recipients, valid?

#### **Ruling:**

1. Yes. Since the Corporation Code merely requires that the notice of the meeting be "in writing", an e-mail notice, which is considered to be in writing, may be included as a mode of notice in the by-laws of a corporation. In such a case, the by-laws must provide for the mechanics of such sending of notices through e-mail, including the indication, recording, changing and recognition of e-mail addresses of each stockholder or director.

However, absent such specific provision on notice requirements in a corporation's current and standing by-laws, the general or default rule is that the written notice must be sent through regular postal mail.

2. Yes. Since the Corporation Code allows the express or implied waiver of the notice requirement by stockholders, members, directors or trustees, it may be conjectured that a signature of a stockholder, director or trustee acknowledging receipt of a notice of meeting sent through e-mail may be considered a waiver.

### **SEC-OGC Opinion No. 13-11 dated November 20, 2013**

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When the resignation of a hold-over director or trustee causes a vacancy in the board, the vacancy may only be filled by a vote of stockholders or members in a regular or special meeting. For this purpose, a quorum shall consist of stockholders representing a majority of the outstanding capital stock or members entitled to vote.

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#### ***Facts:***

K Co. has not conducted the election of its Board of Directors as there have been several failed attempts to obtain the required quorum for stockholders to conduct an election. Because of this, the directors of K Co. act in their hold-over capacity.

Due to the resignation of a hold-over director, there has been a vacancy in the board of directors in K Co. In the absence of a meeting conducted by K Co.'s stockholders or members, the vacancy was filled by the appointment of one hold-over director of another director.

#### ***Issue:***

1. For purposes of determining what constitutes a quorum, should the phrase "entitled to vote" be applied to both the "majority of outstanding capital stock" in stock corporations and "majority of the members" of non-stock corporations, or only to the latter?
2. Is the act of hold-over directors appointing another director to fill-in vacancies caused by the resignation of a hold-over director allowable by law?

#### ***Ruling:***

1. The phrase "entitled to vote" should be interpreted to apply to both stock and non-stock corporations.

Section 52 of the Corporation Code provides that a quorum shall consist of the stockholders representing a majority of the outstanding capital stock or a majority of the members in case of non-stock corporations. On the other hand, Section 24 provides that at all elections of directors or trustees, there must be present, either in person or by a representative authorized to act by written proxy, "the owners of a majority of the outstanding capital stock", or if there be no capital stock, "a majority of the members entitled to vote."

It is only logical that, for the special rule on quorum for election of officers, the quorum is based on outstanding voting stock. To construe it to be applicable only to non-stock corporations is illogical and unreasonable if non-voting shares are also allowed to be represented and voted in the election of directors.

2. No. While acting as directors in a hold-over capacity is not legally infirm, the act of the hold-over directors of appointing someone to fill the position held by another hold-over director is a different matter. A vacancy caused by resignation of a hold-over director or trustee cannot be filled by the vote of the directors or trustee, but rather by the vote of stockholders or members in a regular or special meeting called for that purpose.

### **BLGF Opinions**

#### **BLGF Opinion dated October 8, 2013 signed on November 3, 2013**

#### ***Facts:***

X Co., a domestic company engaged in the telecommunications business, pays community tax and secures its Community Tax Certificate (CTC) from Makati City, where its head office is located.

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The community tax shall be paid only in the place where the principal office of a juridical entity is located and is not required to be paid in the LGUs where branch or sales offices are located.

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However, for taxable year 2013, the local governments of Tagbilaran City and Iloilo City required X Co. to pay the same and secure CTCs for its branch offices located within its territorial jurisdictions despite the presentation of the CTC secured for its principal office.

**Issue:**

Is X Co. required to pay community tax and secure CTCs for its branch offices?

**Ruling:**

No. X Co. should pay and secure CTC only in Makati City where its principal office is located. It is no longer required to secure CTC's from the LGUs where it operates or maintains a sales office, branch or warehouse.

Section 2 of the Memorandum Circular No. 153 dated June 4, 1992 of the Office of the President which provides that "the community tax shall be paid in the place of residence of the individual, or in the place where the principal office of the juridical entity is located and upon payment thereof, the corresponding community tax certificate shall accordingly be issued".

**BLGF Opinion dated October 9, 2013 signed on November 3, 2013**

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The transfer of title to the land and the common areas of a residential condominium project from the developer to the condominium corporation pursuant to the Condominium Act is not a "transfer" but merely a confirmation of ownership over the condominium units previously acquired by the unit buyers. Hence, it is not subject to local transfer tax.

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**Facts:**

X Co. developed and completed a residential condominium project on contiguous parcels of land located in Quezon City. Y Condo Corp, a non-stock and non-profit corporation was formed for the purpose of managing and holding the common areas of the same project.

In compliance with RA No. 5726, otherwise known as the Condominium Act, which requires the condominium corporation to hold title to the common areas as well as the Master Deed and Declaration of Restrictions of the condominium project, X Co. will transfer the title to the land and common areas of the condominium project to Y Condo Corp without any consideration and for the benefit of the unit owners.

**Issue:**

Is the transfer subject to local transfer tax?

**Ruling:**

No. Section 5 of the Condominium Act provides that any transfer or conveyance of a unit or an apartment, office or store or other space in the project, shall include the transfer or conveyance of the undivided interest in the common areas. Accordingly, upon the transfer or sale of condominium units, the buyer also acquires an undivided interest in the land and the common areas of the condominium project through its membership or ownership of shares in the condominium corporation as required by law.

Consequently, the subsequent transfer of the title to the land and the common areas of the condominium project from X Co. to Y Condo Corp pursuant to the Condominium Act is not a "transfer" but merely a confirmation of ownership over the condominium units previously acquired by the unit buyers. Hence, the same is not subject to local transfer tax.

## Court Decision

### **National Power Corporation vs. The Province of Pangasinan and the Provincial Assessor of Pangasinan**

CTA (*En Banc*) EB Case No. 937 promulgated November 11, 2013

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While real property tax attaches to a property, any unpaid realty tax may be directly charged against the taxable person who has actual and beneficial use and possession of the property.

To be exempt from real property tax under Section 234(c) of the LGC, the machinery and equipment must be actually, directly and exclusively used by the local water district or government-owned-or-controlled corporation engaged in the supply and distribution of water or generation and transmission of electric power.

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#### **Facts:**

Petitioner National Power Corporation (NPC), a government-owned and controlled corporation (GOCC), and CEPA Pangasinan Electric Limited (CEPA) entered into an Energy Conversion Agreement (ECA) for the construction, operation, and maintenance of the Sual Coal-Fired Thermal Power Plant. Under the ECA, NPC will supply fuel to CEPA to generate electricity that will then be sold exclusively to NPC.

NPC claimed that it religiously paid real property taxes (RPT) to the Province of Pangasinan from 1998 up to the first quarter of 2003 for the land, buildings, machinery and equipment pertaining to the Power Plant. However, NPC stopped paying realty taxes starting the second quarter of 2003, in light of the provisions of RA No. 7160, otherwise known as the Local Government Code (LGC), which grants exemption to a project owner and user like NPC to pay realty taxes on the machinery and equipment.

The Municipal Treasurer of Sual issued to NPC a Notice of Assessment demanding payment of RPT on the Power Plant site for the second quarter of 2003.

NPC filed a Petition for Exemption with the Local Board of Assessment Appeals (LBAA), which was dismissed. The LBAA held that a private corporation and not NPC is the actual, direct and exclusive and beneficial owner and user of the power plant, buildings, machineries and equipment. NPC appealed to the Central Board of Assessment Appeals (CBAA).

Pending the appeal, the Municipal Treasurer of Sual issued a letter with an Updated Notice of Assessment and Tax Bill demanding payment of RPT for 2006. NPC appealed to the LBAA, and subsequently to the CBAA.

The CBAA dismissed NPC's appeals for lack of merit. NPC then appealed to the Court of Tax Appeals (CTA).

#### **Issues:**

1. Does NPC have the legal personality to claim the real property tax exemption under Sections 234(c) and 234(e) of the LGC?
2. Are the machinery and equipment at the Power Plant exempt from RPT?

#### **Ruling:**

1. No, NPC does not have the legal personality to claim the tax exemption under Sections 234(c) and 234(e) of the LGC.

While the realty tax attaches to the property itself, the unpaid realty tax is directly chargeable against the taxable person who has actual and beneficial use and possession of the property regardless of whether or not that person is the owner.



Under the ECA, ownership of the subject machinery and equipment is vested in CEPA, now Team Energy, and not in NPC. NPC's ownership of the Power Plant will take effect only after the end of the Cooperation Period as stated in the ECA. Until such time arrives, NPC's claim of ownership is merely contingent or expectant.

NPC cannot likewise be considered as the actual user or the possessor of the subject machinery and equipment since the responsibility for the management, operation, and maintenance is conferred on CEPA until the transfer date indicated in the ECA.

The requisite "legal interest" to question an assessment and assert tax exemptions under the LGC should be an interest that is actual and material, direct and immediate, not simply contingent and expectant.

The mere undertaking of NPC that it shall pay the RPT upon its acquisition of the project site does not justify the RPT exemption. The privilege granted to NPC cannot be extended to a third person. The Supreme Court has previously ruled that it is inappropriate for NPC to assume, in its BOT contracts, the tax liability of the other contracting party which the government can impose on the other party, and at the same time allow NPC to turn around and say that no taxes should be collected because NPC is tax-exempt as a GOCC.

2. No, the machinery and equipment at the Power Plant are not exempt from RPT.

Section 234(c) of the LGC provides for RPT exemption on "all machineries and equipment that are actually, directly and exclusively used by local water districts GOCCs engaged in the supply and distribution of water and/or generation and transmission of electric power." The GOCC claiming exemption must be the entity actually, directly, and exclusively using the real property and the use must be devoted to the generation and transmission of electric power.

Lastly, NPC failed to comply with Section 252 of the LGC which requires payment of the tax before any protest against the real property tax assessment can be made. Payment under protest is imperative when what is being questioned is the correctness of the assessment. No protest shall be entertained unless the taxpayer first pays the tax.

*[Editor's Note: In his dissent, Presiding Justice Roman G. Del Rosario stated that payment under protest is not required in this case as NPC is not questioning the correctness or reasonableness of the amount of the assessment but the legality of the real property tax assessment and the very authority to assess and collect realty tax on properties which NPC claims as tax exempt under the LGC.]*

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